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9                   **UNITED STATES DISTRICT COURT**

10                  **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11                  PAMELA THOMPSON, Individually )                   CASE NO.: C 07-05437 PJH  
12                  and as Personal                         )  
13                  Representative of CHARLES             )  
14                  THOMPSON, Deceased,                 )  
15                  Plaintiff,                             )  
16                  vs.                                     )  
17                  CONSECO SENIOR HEALTH                 )  
18                  INSURANCE COMPANY, a                 )  
19                  Pennsylvania corporation,             )  
20                  DOES 1 through XX                     )  
21                  Defendant(s).                         )  
22                  \_\_\_\_\_  
23

24                  [Sonoma County Superior  
25                  Court Case No. 241544]

26                  **[PROPOSED] ORDER**

27                  **DATE: December 19, 2007**  
28                  **TIME: 10:00 a.m.**  
29                  **CTRM: 3,17<sup>th</sup> Floor**

30                  Assigned to: The Honorable  
31                  Phyllis J. Hamilton

32                  The Motion To Dismiss Pursuant To FRCP 12(b)(6), and To  
33                  Strike Pursuant To FRCP 12(f) of Defendant CONSECO SENIOR HEALTH  
34                  INSURANCE COMPANY came on for hearing before the Court, on  
35                  December 19, 2007, at 10:00 a.m. in Courtroom 3, 17<sup>th</sup> Floor, of  
36                  the above entitled court, the Honorable Phyllis J. Hamilton,  
37                  District Judge Presiding. The Law Offices of Marc J. Wodin  
38                  appeared as attorneys for moving parties, and The Law Offices of  
39                  John E. Hill appeared as attorneys for plaintiff.

40                  After considering the moving, opposition, and reply papers,

1 arguments of counsel and all matters presented to the Court,

2 IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED.

3 Plaintiff Pamela Thompson ("plaintiff") is hereby dismissed,  
4 insofar as she is suing in her own capacity, on the first cause  
5 for breach of contract, the second cause for bad faith, and the  
6 third for violation of Welfare and Institutions Code §§15600.

7 Plaintiff is dismissed as to the first cause of action for  
8 breach of contract pursuant to FRCP 12(b) (6)

9 The following portions of plaintiff's complaint, and each of  
10 them, are hereby stricken:

11 Paragraph 12 of the first cause of action for breach of  
12 contract: "The acts of Defendants alleged in Paragraph 8, supra,  
13 were done maliciously and oppressively and with the intent of  
14 defrauding Plaintiff. Plaintiff is therefore entitled to  
15 exemplary or punitive damages." Prayer, item 3: "For punitive  
16 damages" (insofar as it relates to the first cause of action for  
17 breach of contract).

18 Paragraph 15 of the second cause of action for bad faith:  
19 "As a direct and proximate result of the actions of the  
20 Defendants, and each of them, Plaintiff has suffered emotional  
21 distress. . ." Paragraph 19: As a proximate result of said  
22 violations. . . Charles Thompson. . . suffered emotional distress.  
23 . . .

24 DATED:

25  
26 THE HONORABLE PHYLLIS J. HAMILTON  
27 JUDGE OF THE UNITED STATES  
28 DISTRICT COURT